

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 5492 of 1999****Date of Decision : 14.9.2005****NV VAGHELA - Petitioner(s)****Versus****UNION OF INDIA & 1 - Respondent(s)**

Coram :

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice.

The Hon'ble Mr. Justice H.K. Rathod, Judge.

Whether approved for Reporting ?

Appearance :

MR PH PATHAK for Petitioner(s) : 1,

MS PJ DAVAWALA for Respondent(s) : 1 - 2.

Per : Bhawani Singh, Chief Justice (Oral)

Through this petition, order of Central Administrative Tribunal (CAT) dated September 24, 1998 passed in Original Application No. 74 of 1995 with MA No. 70 of 1995 is challenged.

Whether Reporters of Local Papers may be allowed to see the Judgment ?

Shortly stated, petitioner was serving as watchman in the dispensary of Postal Department as casual labour from 1986. His services were terminated by order dated 18.3.1990. Similarly placed persons approached CAT by OA NO. 428 of 1990 and 518 of 1988 in which termination is set aside and applicants were reinstated by order dated 30.4.1993. Petitioner could not approach CAT on account of financial difficulties, therefore, approached Respondents to grant him relief which was extended by CAT to similarly placed persons referred herein above. However, request was not allowed. Consequently, petitioner approached CAT through OA No. 74 of 1995 with MA No. 70 of 1995 but his application has been rejected by CAT on the ground of delay after application for condonation of delay preferred by petitioner was not allowed.

Consequently, order of CAT dated September 24,

1998 is challenged through this petition. Petitioner contends, inter alia, that the CAT should have allowed his application for condonation of delay which contained facts due to which petitioner could not approach CAT in time. Petitioner also contends that when relief of reinstatement was granted in favour of similarly situated persons by the Department pursuant to CAT order, similar benefit should have been extended to the petitioner without driving to approach CAT.

We considered both these questions one after other. First of all, question is whether CAT committed error in not allowing application for condonation of delay. We answer this question in the affirmative. Petitioner has two reasons for filing application late, namely, he is a poor person with family to support. He is facing starvation, therefore, due to financial constraints, he could not approach CAT in time.

Further, he was waiting for the decision in similar case and thought that in the event of success of applicants in similar case, similar benefits would be extended to him by Respondents. There is no lack of bona fides on his part since by committing delay, he would not have gained any advantage, rather, would have suffered. Therefore, it was a fit case for condonation of delay, therefore, CAT should have allowed application for condonation of delay. Therefore, decision of CAT is set aside. CAT considered cases of similarly placed persons under section 25-F of the Industrial Disputes Act, 1947. Similar is the case of petitioner. He has put in 283 days from February 1990 to February, 1989. Before terminating services, requirement of section 25-F should have been followed. indisputably, it has not been followed in this case, therefore, order is liable to be set aside; numerous pronouncements support submissions advanced by petitioner. However, we would like to quote paragraph from

INDER PAL YADAV AND OTHERS VERSUS UNION OF INDIA
AND OTHERS [1985 SCC 648] where apex court said;

".....There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court." [See : G.C. Ghosh and Others versus Union of India and others (1991 Supp. (2) SCC 497].

Consequently, it is held that petitioner has put in more than 240 days service within one year preceding 12 months from the date of termination. His services have been terminated without following section 25-F of the Industrial Disputes

Act, 1947. Therefore, order of termination is void, ab initio, {See : Mohan Lal versus Management of Bharat Electronics 1981 SCC (L&S) 478] therefore, set aside. Respondents are directed to reinstate petitioner in service with continuity of service. Petitioner is not claiming past wages, therefore, past wages are not granted. Judgment be implemented within a month from today. Rule is made absolute. No order as to costs.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K. RATHOD]
JUDGE

Vyas